IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 1083 of 1998(B)

AGAINST THE JUDGMENT DTD. 03/12/1997 IN W.C.NO.60/1994 OF COMMISSIONER FOR WORKMEN'S COMPENSATION, KOZHIKODE)
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APPELLANT/2ND OPPOSITE PARTY:

UNITED INDIA INSURANCE CO. LTD.,
PANDI AUTOMOBILE BUILDING, MALAPPURAM,
REPRESENTED BY ITS DEPUTY MANAGER,
THIRD PARTY CLAIM CELL, ERNAKULAM.

BY ADV. SRI.A.A.MOHAMMED NAZIR.

RESPONDENTS/APPLICANT AND OPPOSITE PARTY I:
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1. **C.M. BASHEER, S/O. C.M. MOHAMMED,**
   CHALIL MULLAN MADAKKAL VEEDU,
   PALLIKKAL.P.O., MELANGADI,
   KONDOTTY, MALAPPURAM DISTRICT.

2. **M. MOHAMED ASHRAF, S/O. BEERANKUTTY,**
   KARADI HOUSE, CHEAKODE,
   MALAPPURAM DISTRICT.

BY ADV. SRI.V.V.SURENDRAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 4289/1998 IN M.F.A. NO. 1083/1998

DISMISSED

SD/- J.B.KOSHY, JUDGE.

11/06/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1083 of 1998

Dated this the 11th day of June, 2007

Judgment

Koshy, J.

Appellant insurance company is questioning the award of the Commissioner for Workmen's Compensation, Kozhikode. First respondent filed an application under section 22 of the Workmen's Compensation Act in response of the injuries caused to him in an accident which occurred on 24.11.1993 during the course of employment. Commissioner found that loss of earning capacity is 30% as a result of the accident and a compensation of Rs.79,693.20 was awarded on the basis of the amended provisions of the Workmen's Compensation Act. The only contention raised is that since the accident occurred before the amendment of the Act, compensation cannot be calculated on the basis of the provisions of the amended Act. The Supreme Court in KSEB v. Valsala (AIR 1999 SC 3502) held that compensation under the Workmen's Compensation Act has to be calculated on the basis of the provisions of the Act existing on the date of the accident. If that be so, compensation payable will be

Rs.1000 x 50 x 30 x 221.37 = Rs.33,205.50. However,
100 100

award was passed and amount was deposited only after the amendment of the Act. Therefore, statutory interest awarded under section 4A (3) needs no change. Total amount awarded by the Commissioner was Rs.79,693.20 with 12% interest from 24.11.1993, the date of accident. We have already held that compensation entitled by him is only Rs.33,205.50 with interest at 12% from 24.11.1993 till deposit of the amount, namely, 26.6.1998. Excess amount deposited has to be refunded to the appellant insurance company. Amount due to the workman after deducting the amount, if any, already paid shall be disbursed.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1083/98

JUDGMENT

Dated:11th June, 2007